

Food and Nutrition Service, USDA

§ 249.15

the State participated, if that amount is less than \$75,000.

(d) *Expansion of participating State agencies and establishment of new State agencies.* Any SFMNP funds remaining for allocation after meeting the requirements of paragraph (b) of this section shall be allocated in the following manner:

(1) Of the remaining funds, 75 percent shall be made available to State agencies already participating in the SFMNP that wish to serve additional participants or increase the current benefit level. If this amount is greater than that necessary to satisfy all State Plans approved for expansion, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(2) of this section.

(2) Of the remaining funds, 25 percent shall be made available to State agencies that have not participated in the SFMNP in any prior fiscal year. If this amount is greater than that necessary to satisfy the approved State Plans for new States, the unallocated amount shall be applied toward satisfying any unmet need in paragraph (d)(1) of this section. FNS reserves the right not to fund every State agency with an approved State Plan.

(e) *Expansion for current State agencies.* In providing funds to State agencies that participated in the SFMNP in the previous fiscal year, FNS must consider on a case-by-case basis the following factors:

(1) Whether the State agency utilized at least 80 percent of its prior year food grant. States that did not spend at least 80 percent of their prior year food grant may still be eligible for expansion funding if, in the judgment of FNS, good cause existed which was beyond the management control of the State, such as severe weather conditions or unanticipated decreases in participant caseload;

(2) Documentation supporting the funds expansion request as outlined in § 249.4(a)(23); and

(3) Whether the State agency currently issues a participant benefit greater than \$50. Such State agencies will not be eligible to receive additional SFMNP funds for expansion until the maximum participant benefit no longer exceeds \$50.

(f) *Funding of new State agencies.* Funds will be awarded to new SFMNP State agencies in accordance with § 249.5.

(g) *Administrative funding.* A State agency will have available for administrative costs an amount not greater than 10 percent of the total SFMNP funds it receives.

(h) *Recovery of unused funds.* State agencies must return to FNS any unexpended funds made available for a given fiscal year by February 1 of the following fiscal year.

§ 249.15 Closeout procedures.

(a) *General.* State agencies must submit to FNS a final closeout report for the fiscal year on a form prescribed by FNS and on a date specified by FNS.

(b) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be followed in accordance with part 3016 of this title.

(1) FNS may disqualify a State agency's participation under the SFMNP, in whole or in part, or take such remedies as may be appropriate, whenever FNS determines that the State agency failed to comply with the conditions prescribed in this part, in its Federal-State Agreement, or in FNS guidelines and Instructions. FNS will promptly notify the State agency in writing of the disqualification together with the effective date.

(2) FNS may terminate a grant when both parties agree that continuation under the SFMNP would not produce beneficial results commensurate with the further expenditure of funds.

(3) Upon termination of a grant, the affected agency may not incur new obligations after the effective date of the disqualification, and must cancel as many outstanding obligations as possible. FNS will allow full credit to the State agency for the Federal share of the noncancellable obligations properly incurred by the State agency prior to disqualification, and the State agency shall do the same for farmers, farmers' markets, roadside stands, and/or CSA programs.

(4) A grant closeout shall not affect the retention period for, or Federal rights of access to, SFMNP records as specified in § 249.23(a). The closeout of a

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grant does not affect the responsibilities of the State agency regarding property or with respect to any SFMNP income for which the State agency is still accountable.

(5) A final audit is not a required part of the grant closeout and should not be needed unless there are problems with the grant that require attention. If FNS considers a final audit to be necessary, it shall so inform OIG. OIG will be responsible for ensuring that necessary final audits are performed and for any necessary coordination with other Federal cognizant audit agencies or State or local auditors. Audits performed in accordance with § 249.18 may serve as final audits providing such audits meet the needs of requesting agencies. If the grant is closed out without an audit, FNS reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

§ 249.16 Administrative appeal of State agency decisions.

(a) *Requirements.* The State agency shall provide a hearing procedure whereby applicants, participants, local agencies and farmers, farmers' markets, roadside stands, and/or CSA programs adversely affected by certain actions of the State agency may appeal those actions.

(1) *What may be appealed.*

(i) An applicant may appeal denial of certification of SFMNP benefits, except that no appeal is available if certification is denied solely because of the lack of sufficient funding to provide SFMNP benefits to all eligible applicants.

(ii) A participant may appeal disqualification/suspension of SFMNP benefits.

(iii) A local agency may appeal an action of the State agency disqualifying it from participating in the SFMNP.

(iv) A farmer, farmers' market, roadside stand, and/or CSA program may appeal an action of the State agency denying its application to participate, imposing a sanction, or disqualifying it from participating in the SFMNP.

(2) *What may not be appealed.* Expiration of a contract or agreement shall not be subject to appeal.

(b) *Time limit for request.* The State or local agency must provide individuals, local agencies, farmers, farmers' markets, roadside stands, and/or CSA programs a reasonable period of time to request a fair hearing. Such time limit must not be less than 30 days from the date the agency mails or otherwise issues the notice of adverse action.

(c) *Postponement pending decision.* An adverse action may, at the State agency's option, be postponed until a decision in the appeal is rendered.

(1) In a case where an adverse action affects a local agency or farmer, farmers' market, roadside stand, and/or CSA program, a postponement is appropriate where the State agency finds that participants would be unduly inconvenienced by the adverse action. In addition, the State agency may determine other relevant criteria to be considered in deciding whether or not to postpone an adverse action.

(2) Applicants who are denied benefits at initial certification may appeal the denial, but must not receive SFMNP benefits while awaiting the hearing. Participants who appeal the termination of benefits within the period of time provided under paragraph (b) of this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to participants whose certification period has already expired or who become otherwise ineligible for SFMNP benefits. Participants who become ineligible during a certification, or whose certification period expires, may appeal the termination, but must not receive benefits while awaiting the hearing.

(d) *Procedure.* The State agency hearing procedure shall at a minimum provide the participant, local agency or farmer, farmers' market, roadside stand, and/or CSA program with the following:

(1) Written notification of the adverse action, the cause(s) for the action, and the effective date of the action, including the State agency's determination of whether the action shall be postponed under paragraph (c)